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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,730	02/27/2004	Joyce M. Mohr	23-0697	8387
40158	7590	01/26/2006		
WOODS FULLER SHULTZ & SMITH P.C. ATTN: JEFFREY A. PROEHL P.O. BOX 5027 SIOUX FALLS, SD 57117			EXAMINER KING, ANITA M	
			ART UNIT 3632	PAPER NUMBER

DATE MAILED: 01/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/789,730	MOHR, JOYCE M.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Anita M. King	3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 February 2004.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-8 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-8 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 27 February 2004 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/27/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

This is the first office action for application number 10/789,730, Implement Retaining Device, filed on February 27, 2004.

***Specification***

The disclosure is objected to because of the following informality: on page 6, line 20, the recitation of "alone" appears to be incorrect and should be --along--.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,050,830 to Hall. Hall discloses an implement retaining device (10) comprising: a body member being adapted for being positioned on a support surface such that the body member is adapted for having a portion of the body member slide under an object positioned on the support surface; a base portion (6) and a retention portion (7), the retention portion being coupled to the base portion, the base portion being adapted for being positioned under the object such that the retention portion extends outwardly from the object, the retention portion being adapted for inhibiting the writing implements from inadvertently rolling off of the body member when the writing implements are placed on the body member between the retention portion of the body

member and the object positioned on the base portion of the body member; the base portion of the body member comprising a free end, the free end being positioned opposite the retention portion of the body member, the free end being adapted for being inserted between the object and the support surface such that the base portion is retained in a desired position by the weight of the object; the retention portion of the body member having a width greater than a width of the base portion, the retention portion extending outwardly from the base portion; the retention portion comprising an arcuate exterior surface, the arcuate exterior surface being adapted for providing a smooth surface; and the arcuate exterior surface of the retention portion of the body member forming a teardrop shape, the retention portion comprising a narrow end representing the narrow portion of the teardrop shape such that the narrow end is coupled to the base portion, the teardrop shape of the retention member providing a gradual incline.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hall. Hall discloses the claimed invention except for the limitation of the base portion tapering from the retention portion to the free end. It would have been obvious to one

having ordinary skill in the art at the time the invention was made to have modified the base portion in Hall to have been tapered to the free end for the purpose of providing an alternative, aesthetically different appearance to the device to accommodate the preference of the user and since such a modification would not have produced any unexpected results.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 155,196 to McNair

U.S. Patent 1,226,992 to Paulus

U.S. Patent 1,650,070 to Hansman et al.

U.S. Patent 2,202,267 to Posnack

U.S. Patent 2,300,216 to Grodsky et al.

U.S. Patent D168,491 to Alvarez

U.S. Patent 3,105,279 to Westhoff

U.S. Patent D228,239 to Bryee

U.S. Patent 4,204,097 to Schmit

U.S. Patent 4,984,529 to Dickson

U.S. Patent Application Publication 2002/0036253 to Lake

U.S. Patent 6,477,744 to Miles

U.S. Patent 6,634,126 to Ruffino

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (571) 272-6817. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (571) 272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Anita M. King  
Primary Examiner  
Art Unit 3632

January 23, 2006